

REMARKS

Claims 1-27 are pending in this application. Claims 2-6, 11-22 and 24 are withdrawn from consideration as being drawn to a non-elected invention or a non-elected species. Claims 1, 7-10, 23 and 25-27 are rejected. By the present amendment, claims 1, 23, 25, 26, and 27 are amended, and claims 11-22 and 24 are hereby canceled without prejudice or disclaimer. By the present amendment, new claims 28-31 are hereby added. Support for the amendment to claims 1, 23, 25, and 27, is found in original claim 6. Support for the amendment to claim 25 is found on page 39, second full paragraph. As the amendments, and new claims are fully supported by the application as filed, the amendments and new claims add no new matter.

In view of the above-described amendments and following remarks, reconsideration of claims 1, 7-10, 23, and 25-27, and consideration of new claims 28-31 are respectfully requested.

§102 Rejections

Claims 1, 7, 9, 23, 26, and 27 are rejected under 35 USC §102(b) as being anticipated by Daugherty et al (Reference AN on the IDS submitted 8-12-02)(hereinafter Daugherty et al.)

Claims 1, 23, 26, and 27 have been amended to recite a method which comprises determining levels of MPO, MPO mass (and/or MPO activity) in blood, serum, plasma, or blood cells obtained from the test subject. Daugherty et al. does not disclose, teach or suggest determining levels of MPO in any of these bodily samples. Lacking such a disclosure, Daugherty et al. does not anticipate the methods of claims 1, 23, 26, and 27. Furthermore, Daugherty et al. does not anticipate the methods of claims 7 and 9, which depend from claim 1. Accordingly, applicants submit that the rejection should be withdrawn.

§112 Rejection.

Claim 25 has been rejected under 35 USC § 112, first paragraph, "as failing to comply with the written description requirement." (See page 3, paragraph 8 of the Office Action.)

Claim 25 has been amended to recite that the test subject is a non-diabetic, non-hypertensive, non-smoker. Support for the amendment is found in the second full paragraph on page 39 of the specification which shows that the MPO levels are independent of diabetes,

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hypertension, and smoking (ever or current). Applicants submit that claim 25, as amended, complies with the written description requirement of §112.

Double-Patenting Rejection

Claims 1, 7-10, 23, and 26-27 are provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7-10 and 16-17 of co-pending and commonly assigned US Application No. 10/972,058. As suggested by the Patent Office, applicants are submitting herewith a terminal disclaimer, which obviates the rejection.

In view of the amendments, remarks, and terminal disclaimer, applicants submit that claims 1, 7-10, 23, 26-27 and new claims 28-31 are allowable. Prompt notice of such allowance is respectfully requested. If the Examiner has any questions regarding the amendments, he is encouraged to call the undersigned, at (216) 622-8416.

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Respectfully submitted,

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